

STATE OF MICHIGAN
COURT OF APPEALS

ANGELA STEINBERG, as Personal
Representative of the Estate of JEAN
RAYMOND, Deceased, and the Estate of MARIO
RAYMOND, Deceased,

Plaintiff-Appellant,

v

LORETTA RAYMOND, as Personal
Representative of the Estate of CHARLES
RAYMOND, Deceased,

Defendant-Appellee.

UNPUBLISHED
August 28, 2001

No. 218509
Wayne Circuit Court
LC No. 98-806320-NO

Before: White, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(7). We affirm.

Jean Raymond died on February 29, 1992. Her surviving children were plaintiff Angela Steinberg, Charles E. Raymond, and Mario Raymond. Charles died on June 7, 1996. Mario died on February 10, 1998. Plaintiff is the personal representative of her mother's estate. Defendant is Charles' widow and the personal representative of his estate.¹

Jean had relied upon Charles for advice and counseling in handling her financial and legal affairs. Jean told plaintiff that Charles was handling her estate planning needs and that all three children would be treated equally upon her death. A short time before Jean's death, she told plaintiff that she believed someone had stolen her investments. After her death, Charles delivered to plaintiff a check for \$22,000 and told plaintiff that this amount represented her share of their mother's estate. Plaintiff later suspected that both Mario and Charles received a substantial amount of property and assets incident to their mother's death. She learned that a brokerage account set up as a joint tenancy in the names of Mario and Charles had assets of almost \$434,000.

¹ It was established at the hearing on defendant's motion for summary disposition that plaintiff is not the personal representative of Mario's estate.

On October 7, 1996, plaintiff filed a notice and proof of claim against Charles' estate. Her claim was disallowed in its entirety on November 1, 1996. On January 2, 1997, plaintiff filed a complaint in her individual capacity against Charles' estate. She voluntarily dismissed that action on December 19, 1997.

On February 27, 1998, plaintiff brought the instant action in her capacity as personal representative of her mother's estate. Plaintiff alleged that Charles breached his fiduciary duty to Jean in planning her estate. Plaintiff also claimed that he fraudulently represented to plaintiff that the \$22,000 given to her constituted her entire interest in Jean's estate which prevented her from taking legal action. Plaintiff also stated a claim for conversion by alleging that Charles retitled Jean's assets in his name prior to her death.

Defendant moved for dismissal or summary disposition on several grounds, including the statute of limitations, MCR 2.116(C)(7). The trial court agreed that plaintiff's claims were time barred, and granted summary disposition on that basis.

On appeal, plaintiff argues that the statute of limitations does not bar her claims. We review a trial court's grant of summary disposition de novo. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). A trial court's determination whether a cause of action is barred by a statute of limitations is a question of law, which we also review de novo. *McKinney v Clayman*, 237 Mich App 198, 201; 602 NW2d 612 (1999).

MCL 700.358(3) provides that a claim "to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting on behalf of an heir or devisee, to recover property improperly distributed or the value of the property from any distributee, is forever barred at the later of 3 years after the decedent's death or 1 year after the time of distribution." Because Jean died in 1992, and any improper distribution from her estate to Charles must have occurred prior to Charles' death in 1996, plaintiff's claims are barred under this provision.

Plaintiff relies upon the exception in MCL 700.358(3) which applies to fraud. The statute provides that in cases of fraud, "a person who is deprived of an opportunity to establish his or her interest in a succession may recover damages or obtain any other appropriate relief in an action against the perpetrator of the fraud, or may obtain restitution from any person, other than a bona fide purchaser, benefiting from the fraud whether innocent or not, *by an action commenced within 2 year from the discovery of the fraud . . .*" (emphasis added). Plaintiff argues that she did not discover Charles' alleged wrongdoing until after his death. She maintains that MCL 700.358(3) permits her to commence an action within two years of the discovery of the fraud.

If plaintiff had filed an action against Charles before his death, her claim would have survived his death. Plaintiff argues that she only discovered her claim after Charles' death.

Because plaintiff filed this action after Charles' death,² her claim against Charles' estate is governed by Article 7 of the Revised Probate Code. MCL 700.1 *et seq.*; *In re Greenburg Estate*, 157 Mich App 515, 518; 403 NW2d 177 (1987). Pursuant to MCL 700.710(1) and (2)(b), claims against Charles' estate must be filed within four months of the publication of notice to creditors. Defendant published a notice to creditors on June 17, 1996. Accordingly, plaintiff's action on behalf of Jean's estate, filed February 27, 1998, was not timely.

Plaintiff's reliance upon MCL 700.358(3) is misplaced. It is Jean's estate of which plaintiff claims she has an interest in succession, not Charles' estate. She alleges that Charles perpetrated a fraud to deprive her of an opportunity to establish her interest in Jean's estate. Plaintiff has not alleged any fraud with respect to the handling of Charles' estate, and therefore MCL 700.358(3) does not operate to extend the limitations period for claims against Charles' estate.

We also reject plaintiff's argument that the statutes of limitations found in the Revised Judicature Act save her claim. Because this action was instituted against Charles' estate, this matter is controlled by the Revised Probate Code. MCL 700.1 *et seq.*; *In re Greenburg Estate*, *supra* at 518.

Plaintiff next argues that the trial court abused its discretion in refusing to allow her to amend her complaint. Plaintiff contends that she should have been allowed to amend her complaint to name John M. Chase, Jr. as the personal representative of Mario's estate and to more particularly plead an action for conversion on behalf of Mario's estate. She also argues that the trial court should have allowed an amendment so that the conversion claim brought on behalf of Jean's estate could be pleaded with more particularity. We disagree.

The decision whether to grant or deny a motion to amend a pleading is within the sound discretion of the trial court and will be reversed only for an abuse of discretion. *Doyle v Hutzell Hosp*, 241 Mich App 206, 211-212; 615 NW2d 759 (2000). We find no abuse of discretion.

Plaintiff is not the personal representative of Mario's estate. Accordingly, she has no standing to bring an action on behalf of that estate or to unilaterally amend her complaint to add the personal representative as a plaintiff on behalf of the estate. We also reject plaintiff's argument that she should have been allowed to amend her complaint to plead conversion with more particularity on behalf of Jean's estate. The trial court granted summary disposition pursuant to MCR 2.116(C)(7), not MCR 2.116(C)(8). Therefore, the trial court is not required to grant leave to amend. See MCR 2.116(C)(5). Further, amendment would be futile because

² Plaintiff presented her claim in her individual capacity within four months of the publication of notice to creditors and filed a complaint within sixty-three days of its disallowance. MCL 700.712(2). There is no claim that the instant action filed on behalf of Jean's estate relates back to the filing of her complaint in her individual capacity. We note that the exercise of due diligence would have revealed the proper parties to name.

plaintiff's claims are time-barred. We conclude that the trial court did not abuse its discretion in denying plaintiff's motion to amend her complaint.

Affirmed.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot